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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,657	08/01/2003	Cecelia Katherine Davis	1209-101.US	3535

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tata

Office Action Summary

Application No.

10/632,657

Applicant(s)

DAVIS, CECELIA KATHERINE

Examiner

Stephanie L. Willatt

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the light of claim 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 2, 7, and 14 are objected to because of the following informalities:
- Claim 2 states that the “body portion is located between eyelashes and the adjacent area of the eye.” However, this only happens when the shield is in use. Perhaps, --when the shield is in use-- should be inserted after “eye”.
 - Claim 7 states that the lashes are adapted to abut against the score lines. However, it seems that the score lines are adapted for the lashes to abut against them.
 - It seems that “shaped wall” in claim 14 should be --shaped edge--.
- Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 8, 13-16, 20, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Inzana et al. (US 4,033,364).

Inzana et al. disclose an eye make-up applicator shield comprising a body portion (eyelid covering portion 13) having a contoured wall and a shaped edge for being located around the eye, as discussed in column 2, lines 26-29. A handle (10) is

Art Unit: 3732

connected to and extending from the body portion (eyelid covering portion 13). The body portion (eyelid covering portion 13) is located between eyelashes and the adjacent area of the eye when the shield is in use. The handle (10) is connected to the body portion (eyelid covering portion 13) so that, in use, the body portion (eyelid covering portion 13) can be located such that access to the eye is not obstructed by the handle (10).

The handle (10) includes a container portion (column 2, lines 34-37). The handle (10) comprises two sections: the second section being the container portion. The container portion includes a cover (25) that could be removed with enough force, especially the slide track embodiment of the cover (25) discussed in column 2, lines 39-42. The contoured wall has an inner surface and an outer surface. The shield is made of plastic, as discussed in column 1, lines 63-65. The contoured wall varies in its degree of contour so as to suit the particular features of the user, as discussed in column 2, lines 26-29. The shaped edge is of arcuate shape that can vary with features of the user. The edge of the body portion (eyelid covering portion 13) has a blunted surface for engagement with the eye and surrounding area, as shown in Figure 3.

5. Claims 1-4, 9, 13-15, 18, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Lovie (US 1,974,825).

Lovie discloses a make-up applicator shield comprising a body portion (arch 3) having a contoured wall and a shaped edge for locating about the eye. A handle is connected to and extends from the body portion (arch 3). The body portion (arch 3) is

Art Unit: 3732

located between the eyelashes and the adjacent area of the eye when the shield is in use, as shown in Figure 1. The body portion (arch 3) comprises a contoured wall that is contoured to fit over the user's eyelid, as discussed in lines 52-58. The handle comprises two sections, and is connected to the body portion (arch 3) so that, in use, the body portion (arch 3) can be located such that access to the eye is not obstructed by the handle. The shield is made of metal, as discussed in lines 107-109 of page 1. The shaped edge is of arcuate shape that can vary with features of the user. The handle comprises a first portion (1) connected to the body portion at an upward angle and a second portion (end 4) connected to the first portion (1) at an angle relative thereto, as shown in Figure 3. The edge of the body portion (arch 3) has a blunted surface for engagement with the eye and surrounding area, as shown in Figure 1. The method of claim 22 shown in Figure 1 and discussed in line 70-86 of page 1.

6. Claims 1-4, 13-15, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bohner (US 1,873,928).

Bohner discloses a make-up applicator shield comprising a body portion (guard sheet 2) having a contoured wall and a shaped edge for locating about the eye. A handle (3) is connected to and extends from the body portion (guard sheet 2). The body portion (guard sheet 2) is located between the eyelashes and the adjacent area of the eye when the shield is in use, as shown in Figure 1. The body portion (guard sheet 2) comprises a contoured wall that is contoured to fit over the user's eyelid, as discussed in lines 59-68 of page 1. The handle (3) comprises two sections, and is

Art Unit: 3732

connected to the body portion (guard sheet 2) so that, in use, the body portion (guard sheet 2) can be located such that access to the eye is not obstructed by the handle (3), as shown in Figure 2. The contoured wall has an inner surface and an outer surface. The contoured wall varies in its degree of contour so as to suit the particular features of a user. The shaped edge is arcuate and can vary depending upon the features of the user, as shown in Figure 1. The handle (3) is of generally rounded configuration. The shaped edge has a blunted surface. The shield is used in the method of claim 22, as discussed in lines 76-90.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inzana et al. (US 4,033,364) in view of Schrepf et al. (US 4,861,179).

Inzana et al. discloses the features discussed above, but does not disclose that the container includes a mascara brush. Schrepf et al. disclose a mascara container (40) that includes a brush (11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of Inzana et al. with

Art Unit: 3732

a brush, as taught by Schrepf et al., in order to provide a brush with the container that is always ready to be used and does not have to be washed after each use. Schrepf et al. does not disclose whether or not the brush is clean. However, it is well known that mascara brushes must be sanitary, since they are used on people's eyes.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inzana et al. (US 4,033,364) in view of Davis (US 2002/0124865 A1).

Inzana et al. discloses the features discussed above, but does not disclose scores. Davis discloses a mascara shield (14) with scores (grooves 18) at the edge (16). The scores (grooves 18) promote the separation and elongation of eyelashes during the application of eyelash makeup, as taught in paragraph [0006]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shield of Inzana et al. with scores, as taught by Davis, in order to promote the separation and elongation of eyelashes during the application of eyelash makeup.

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lovie (US 1,974,825) in view of Davis (US 2002/0124865 A1).

Lovie discloses the features discussed above, but does not disclose scores. Davis discloses a mascara shield (14) with scores (grooves 18) at the edge (16). The scores (grooves 18) promote the separation and elongation of eyelashes during the application of eyelash makeup, as taught in paragraph [0006]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

Art Unit: 3732

make the shield of Lovie with scores, as taught by Davis, in order to promote the separation and elongation of eyelashes during the application of eyelash makeup.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bohner (US 1,873,928) in view of Davis (US 2002/0124865 A1).

Bohner discloses the features discussed above, but does not disclose scores. Davis discloses a mascara shield (14) with scores (grooves 18) at the edge (16). The scores (grooves 18) promote the separation and elongation of eyelashes during the application of eyelash makeup, as taught in paragraph [0006]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shield of Bohner with scores, as taught by Davis, in order to promote the separation and elongation of eyelashes during the application of eyelash makeup.

12. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inzana et al. (US 4,033,364) in view of Braun (US 3,884,232).

Inzana et al. disclose the features discussed above, but do not disclose that the body portion is comprised of a color that can provide a contrast to the color of the eyelashes. However, Braun teaches this feature in column 1, lines 50-51. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shield of Inzana et al. as a color that can provide a contrast to the color of the eyelashes, in order to make it easier to identify lashes that need to have make-up applied to them.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lovie (US 1,974,825) in view of Braun (US 3,884,232).

Lovie disclose the features discussed above, but do not disclose that the body portion is comprised of a color that can provide a contrast to the color of the eyelashes. However, Braun teaches this feature in column 1, lines 50-51. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shield of Lovie as a color that can provide a contrast to the color of the eyelashes, in order to make it easier to identify lashes that need to have make-up applied to them.

14. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inzana et al. (US 4,033,364) in view of Birnkrant et al. (US 2,512,476).

Inzana et al. disclose the features discussed above, but do not disclose a mirror located on the container. Birnkrant et al. teach a mirror (23) located on the outside of an make-up container (lipstick holder 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the shield of Inzana et al. with a mirror on the container, as taught by Birnkrant et al., in order to provide the user with a mirror so that she can see herself and make sure that she applied her make-up properly.

Art Unit: 3732

15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Inzana et al. (US 4,033,364) in view of Birnkrant et al. (US 2,512,476) as applied to claim 11 above, and in further view of Ramstad (US 1,998,523).

Inzana et al. disclose the features discussed above, but do not disclose a light and a power source. Ramstad discloses a mirror (7) located on a container for make-up. The mirror includes a light (lamp 5) and a power source (battery), as discussed in lines 25-36 of column 1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make to include a light and power source on the combination of Inzana et al. and Birnkrant et al., as taught by Ramstad, in order to provide light for the user to see herself in poorly lit areas.

Conclusion


16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Green, Kassai, and Bomba disclose eye makeup shields.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


slw


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